COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

Meeting Summary
Wednesday, September 13, 2017, 10:00 AM
House Room 1, The Capitol

Members of the commission present were: Delegate Marshall, Senator Locke, Senator Barker, Delegate Bulova, Delegate Carr, Delegate Knight, Delegate Peace, Ms. Lafayette, Mr. Pearson and Ms. Palen, Director.

The Virginia Housing Commission members heard presentations from two outside speakers; Bill Shelton of the Department of Housing and Community Development (DHCD) and Kenny Payne, Architect. The third speaker on the agenda, Sheriff Ken Stolle, needed to reschedule his appearance and will attend the full Commission meeting on December 6, 2017 at the Capitol. Additionally, each of the Workgroup chairs gave a progress report during this meeting.

Bill Shelton, Department of Housing and Urban Development (DHCD), spoke to the Commission about housing persons with serious mental illness. (See presentation under materials).

The study is to have a broad stakeholder group to gather specific recommendations for those persons with severe mental illness and their housing needs.

He described the genesis of the group; it was formed through the Deeds Commission (Joint Subcommittee Studying Mental Health Services in the Commonwealth in the 21st Century) and a budget amendment.

Virginia Housing and Development Authority (VHDA) has brought in a consultant with the national consulting firm Technical Assistance Collaborative (TAC), who will facilitate the process and interview stakeholders.

It is too early to talk about results, since only one meeting has taken place, with a subsequent meeting the third week in September. The group is looking primarily at establishing permanent supportive housing but not solely, because there also needs to be non-permanent housing options for some of this population. The key component discussed was whether or not it should be scattered housing. Another key issue is income and the ability for the housing to be affordable.

Jails or health care facilities house those who are severally mentally ill an average of 70 days per year. Shelton said this should, and can be, reduced significantly. If a rent subsidy is offered initially, then fewer additional housing units will need to be built. Persons are less likely to go back to a mental health facility and this opens up beds for those persons with mental health emergencies not a need for long-term housing.

DHCD will give an annual report to chairs of House Appropriations and Senate Finance Committees of the General Assembly on the first day of session.

Kenney Payne, Virginia AIA, reported about the tragic fire and destruction of the London high rise and compared its structure against the requirements in the Building Code in Virginia. The tower was constructed in the 1970's of concrete, rose to 24 floors and was not sprinkled. The tower had one stairwell. He noted officials in London have not yet completed the final report**.**

To add some historical perspective, beginning in the 1970's all high rises in Virginia needed to be sprinkled and in the 1990's all residential buildings over 150 feet needed to be sprinkled. The building in London had one stairwell into the center of the lobby; stairwells in Virginia must be along sides of buildings. The Code in Virginia says you must have a service elevator. There was no service elevator in the London building where the fire took place.

Additionally, thermal, fire-resistant barriers are required in Virginia; in contrast the building in London did not have a proper draft stopping metal panel, Virginia requires the panels to be fire resistant.

The Basic Building Codes throughout the United States are far more stringent. Virginia has adopted the Uniform Statewide Building Code which is enforced by localities who can amend only by adding additional requirements.

Most 75 feet or taller high rises are concentrated in Northern Virginia, and are required by Virginia's Building Code to be sprinkled. The Virginia Rehabilitation Code covers any hotel over four stories and college dorms.

A question was asked to the localities and counties–what is the universe of high rises in Virginia and how many older buildings do we have that are not retrofitted? An answer will be provided at the December meeting.

Systems in Virginia are updated every three years and in two months the cycle will begin again to determine revisions and changes.

Building and Fire Codes are past half-way point for the next bundle of codes being amended and adopted in Virginia. Meetings are occurring and this open-ended process soon concludes as a new Statewide Uniform Building Code will be adopted in 2018.There are several controversial issues remaining from the 2015 International Code that will be solved in this cycle. The Chair,

Danny Marshall, requested that a report on the major changes as adopted this fall be added to the agenda for Virginia Housing Commission to be held in December.

Senator Mamie Locke gave the update for the Neighborhood Transitions and Residential Land Use Workgroup.
Concerning HB1934 dealing with excessive police calls to residential hotels/motels, Chip Dicks reported the group of interested participants has provided input and he was on version three of the proposed bill draft and is coordinating the comments.

Hotels/motels which primarily house (full-time residents/not as temporary residents) drug addicts and prostitutes are responsible for a disproportionate amount of crime in the neighborhoods.

The bill draft purports to civilly fine hotel/motel owners who have excessive phone calls to police as a way of curbing criminal behavior (police brought this issue forward).
Housing Opportunity Made Equal spoke of disparate impact on abused women.

Let Elizabeth Palen know if you would like to receive the draft; it will be discussed in depth October 18 at the Neighborhood Transitions Workgroup meeting.

Also, on the bill draft concerning smoke and carbon monoxide detectors and local regulations, there has been a confluence of comments. Legislation incorporating all comments is being drafted and will be presented for comment at the October 18 meeting of Neighborhood Transitions. The main issue being addressed is the fact that smoke and carbon monoxide detectors have different requirements for certification throughout the Commonwealth. The goal of the legislation is to create a uniform policy concerning the detectors.

Delegate Chris Peace gave the overview of the Affordable Housing and Real Estate Law Workgroup.
The group met on Wednesday May 10 and had a Sub-workgroup on Thursday June 1, 2017. Two bills were discussed in conjunction with one another-- (HB 1638, HB1639; J. Leftwich, 2017)

Delegate Jay Leftwich spoke to the workgroup about prohibiting a landlord from requiring his tenant to agree to subrogation for damages or rental insurance. He also spoke briefly to the case where there is a financial arrangement between the insurer and the landlord.

The Association of Realtors and Independent Insurance agents also spoke and said the Bureau of Insurance needs to offer an opinion if the issue is to go further.

Several issues were discussed in depth including that tradespeople will not do work unless they are held harmless. It is not rare in commercial contracts to require subrogation, but is not such a common practice in home rentals, although it is built-in with current personal lines of insurance.

Additionally, home owner policies do not waive liability of others/joint/severable liability (example: insured has dog, landlord lets the dog out, dog bites child.)
Also, you can require tenant to have rental insurance which keeps down the cost of security deposits.

One argument was that if you are a part owner of a title insurance company you must disclose that fact, as an attorney you must also disclose, so there is no reason for a landlord not to disclose.

The issue was not resolved in the meeting but Chip Dicks met with the Bureau of Insurance after this meeting and there is actually a waiver in every homeowner rental policy that is a standard provision. The insurance agents who spoke with Delegate Leftwich evidently did not understand it was a standard provision and that a rider cannot be written. -Realtors will not waive that provision.

The next issue in the workgroup was concerning lease agreements and late charges and how they are applied. (SB 993; W. Stanley, 2017)

Senator Bill Stanley brought the bill to the General assembly in 2017 at the request of Christie Marra, Poverty Law Center.

The issue is when rent is paid, any late fees that have been paid are applied first to late payments. This confuses tenants and hurts those with fragile credit as amount owed cascades month by month. The proponents asked for a 5% ceiling on late fees or for amount to go first toward rent.

The counter argument was that all charges are considered by the court to be contracted for in a rental agreement. there is not a cap on mortgage payments when late. A consequence would be that landlords would be less inclined to allow those with poorer credit to rent from them.

No conclusion was reached at this meeting although a spirted discussion took place. A Sub workgroup meeting was scheduled and the conclusion was that standard accounting principles allow late fees to be paid first as part of the contract. A draft bill was produced from the Poverty Law Center but it was not the wish of realtors or the patron for this bill/topic to go forward.

Common Interest Communities Workgroup had a progress report given by Delegate David Bulova.
He said that two bills had been referred from 2017 Legislative Session from Senator Siobhan Dunnavant and Delegate Vivienne Watts; Senator Scott Surovell had ideas for proposed legislation.

At the earlier meeting Senator Dunnavant spoke about SB 1401 (SB1401; Dunnavant, 2017) which was drafted because a constituent brought forth an issue involving Grey Oaks, a 450 home community and planned development built in 2003. The declarant still remains in control of the board and will continue to do so, as stipulated in the contract, until 100% of lots are sold. There have been low sales in the development and the homeowners are upset because they have "no vote, no voice." The homeowners asked, and were denied, a phasing-in period for board representation. They feel it is unjust as they are paying HOA fees and they do not have a promised playground, and there are still unpaved neighborhood roads.

The solution was to work toward a shoring-up process with localities, determine if bonds are in place or conditions have been proffered. Additionally, there should be transparency for homeowners achieved through developing a best practices (gold standard of what communities should have) manual and transparency in books and records so that the expectations of future home owners can be managed. A sheet with the disclosure packets outlining board controls etc. was also suggested at the meeting.

Fees for disclosure packets by associations not professionally managed was discussed by Senator Vivian Watts (HB2376; Watts, 2017) at the meeting and she said this is her third year pleading the case that fees should be the same for self-managed organizations as those with a paid manager. Originally, people thought self-managed meant that the organization was formed when there were 10-20 homes on a leftover street, but close to 25% of self-managed associations are comprised of 500 or more homes.

The cost to an association to be professionally managed is $30,000-40,000 so it is not always cost beneficial for the homeowners. A special assessment would be needed to provide the fee as the original documents from associations of a certain age say costs cannot be more than cost of living.

It was mentioned that the original idea was for a 10-cent per-page fee for copies and volunteers should not be paid. A discussion ensued about the interplay between condominium/POA act and recodification of Title 55 (But, please note: no substantive changes may be made in the recodification).

The workgroup as a whole expressed that preparers ought to be reimbursed for disclosure packets as long as it is of the same quality package as that of professionally managed organizations. Electronic filing among professionally and non-professionally managed organizations should be highly encouraged.

Senator Scott Surovell spoke to three homeowner and condominium owner association issues at the Common Interest Communities meeting. The first concerned HOA/COA Insurance Minimums.

He mentioned a partial building collapse resulting in the condemnation of 35-40 units do to improper maintenance. The association maintained an $87M policy for fire/flood, but only

$1M for general liability so all homeowner's sustained massive uninsured losses. Therefore, HOAs/COA's should maintain sufficient liability insurance relative to the value of the property they are insuring. This will obviously result in some increased insurance expense, but it should not be significant relative to their risk being insured.

Senator Surovell suggested general liability insurance minimums should be equal to greater of $1M or 50% of value of assets under management. The workgroup did not have agreement as questions were raised if Lloyds of London would need to be secondary insurer. Also, there is a need to look for liability and negligence and determine who was negligent.

Additionally, Senator Surovell discussed issues regarding capital reserves and storm water including the fact that many privately maintained storm water facilities are out-of-compliance and require maintenance. He noted he has never seen a reserve study that either evaluated storm water facilities or projected capital needs relative to maintaining them.

He suggested local government was asked to ascertain what may be needed in this situation. It was proposed to explicitly require storm water facilities to be assessed and projected as part of the five-year capital reserve study and require the annual audit to be available to purchasers. There was tacit agreement among the workgroup members.

Also, to include a conspicuous statement in each budget, as to total amount of unfunded capital needs pursuant to the reserve study and the amount divided by the number of homeowners and amend Code of Virginia sections 55-509.5 and 55-79.97 to require the same thing in the disclosure packet. An issue regarding redacted records for HOA/COA's was also discussed as current code is silent as to whether an entire record can be withheld if it contains exempt information or whether it must redact.

The proposal suggested was to require HOA/COA's to redact exempt information from records instead of withholding entire records. Senator Scott Surovell said if any document has objectionable material under 59-79.74:1(c) or 55-510(c), then the record must be produced in redacted format - basically paralleling the provisions added to FOIA in 2016.

Those opposed said that salary information is protected in condominium associations and in POA's certain salaries, at certain levels do not have to be disclosed. The CIC is not required to withhold information but many do, and they may do so as they are private entities.

Heather Gillespie, Ombudsman of DPOR, reported that she has many calls concerning the misrepresentation of facts concerning time-share properties. The Workgroup did not make a decision as to what to do in this regard.

The Chair of the Commission asked for public comment and hearing none, the meeting was adjourned at 12:15 PM.